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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection and	)	MM Docket No. 92-259
Competition Act of 1992	)	
	)	
Broadcast Signal Carriage Issues	)	

COMMENTS OF
NEWHOUSE BROADCASTING CORPORATION

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TABLE OF CONTENTS

SUMMARY

I. **Retransmission Consent.**

The Commission's rules must provide for a reasonable transition period to come into compliance with the must-carry and retransmission consent provisions. Because the implementation of both must-carry and retransmission consent will have a substantial disruptive impact on the channel lineups of many cable systems and the established viewing patterns of cable subscribers, a sufficient amount of time to come into compliance with these requirements is necessary. The FCC should require local commercial stations to elect between retransmission consent and must-carry and notify each cable system by a written notice of their election by May 1, 1993 and then by May 1st every three years thereafter. Both rules should then become effective on October 6, 1993. Moreover, the Commission's implementation procedures should specify a default election procedure that will maintain the status quo in the absence of an affirmative must-carry/retransmission consent election by local stations.

Newhouse disagrees with the Commission's suggestion that the retransmission consent language in the Act may permit existing or future contractual agreements between broadcasters and program suppliers to deal with retransmission rights. Congress intended to grant broadcasters control over the retransmission of their signals. The rights in the underlying programming are separate from the rights to the broadcaster's signal. The compulsory license scheme would remain unmodified because a cable operator

cannot claim that retransmission consent by a broadcast station includes the right to the underlying programming, thus a cable operator who receives retransmission consent from a broadcast station must still fulfill the requirements of Section 111. future program agreements are unaffected as well since program Existing and suppliers are compensated through a combination of direct license fees from broadcasters and compulsory license fees from cable operators.

Retransmission consent does not, and should not, apply to the carriage of Canadian stations.

The superstation exemption from retransmission consent should be available to cable systems which receive such stations using reception methods other than satellite. The Commission should apply the exemption by looking to the broadcast station, not the means of reception.

Newhouse urges the Commission to acknowledge that a must-carry/retransmission election must be asserted ADI-wide and not on a community-by-community basis. If retransmission consent is not applied uniformly throughout an ADI, broadcast stations will exert leverage and small systems in particular may be hurt.

It is clear that the retransmission consent requirement was intended by Congress to apply to all multi-channel video programmers. Although SMATV and MATV systems are not specifically delineated in the list of examples contained in the statutory language, the definition of a multi-channel video programming distributor is not limited to the examples given and encompasses any person who makes available multiple channels of video programming for sale to subscribers.

Cable operators should be able to count channels used for the carriage of local retransmission consent signals to meet the channel set-aside requirements of Section 614.

In the implementation of retransmission consent, the Commission must guard against the unreasonable withholding of programming from the public.

II. **Must-Carry.**

In implementing the requirement for carriage of qualified, local noncommercial educational stations ("NCE"), the Commission should keep in mind Congress' directive to promote access to "distinctive" NCE services, and not just more of the same. Thus, questions of station qualification and programming duplication should be examined carefully.

The location and definition of the term "principal headend" is an important issue for making the determination of whether a qualified NCE station must be carried. Cable operators should be able to specify the location of their own principal headends.

In defining the term "substantially duplicated" for NCE stations Newhouse suggests that substantial duplication should be defined as 14 weekly prime time hours, the definition used in the Commission's former must-carry rules. Moreover, the duplication should not have to be simultaneous.

The Act defines commercial television stations as being local where the cable system is located within the Area of Dominant Influence of a station. The use of the ADI creates a potentially chaotic situation for cable systems located in counties which shift from one ADI to another in Arbitron's annual

reconfiguration. Newhouse therefore suggests that the Commission should freeze the ADI market list as of the time when the rules are adopted.

As is the case for NCE stations, the location of a cable system's principal headend is important to the must-carry rules for commercial stations. The Act requires that a good quality signal be delivered to a cable system's principal headend in order to maintain must-carry status. Likewise, a technically integrated cable system serving multiple communities may be located in more than one ADI. The cable system should be considered located only within one ADI. In multiple ADI situations, the cable operator should be free to choose the ADI in which it will be located. The location of either the system's principal headend or center of system coordinates in the chosen ADI should be considered prima facie evidence.

Newhouse agrees that there will sometimes be valid reasons to add or delete communities from the local market of a particular television station for must-carry purposes. These reasons should be advanced in a petition for special relief pursuant to the procedures contemplated in the Act. Meanwhile, as the Act states, the status quo should be maintained pending the resolution of any requests for such an adjustment.

NEW/3679

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COMMENTS OF
NEWHOUSE BROADCASTING CORPORATION

Newhouse Broadcasting Corporation ("Newhouse") files these comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding ("Notice"). The Notice seeks comment on specific proposals to implement the must-carry and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act" or "Act").

INTRODUCTION

Newhouse, through its affiliated cable companies NewChannels Corp., MetroVision, Inc. and Vision Cable Communications, Inc., owns and operates cable television systems in 17 states which, as of December 31, 1992, served approximately 1,350,000 subscribers. Newhouse, through its subsidiary EMI Communications Corp., also distributes the satellite signals of WWOR-TV (New York) on a common carrier

basis to CATV, SMATV and MMDS systems and HTVRO owners, and WSBK-TV (Boston) principally to the HTVRO market. Newhouse also owns minority interests in certain cable programming services. Newhouse has been involved in the cable television business since 1965 when it acquired its first cable franchise in upstate New York.

Mr. Robert J. Miron, President of Newhouse, is a past Chairman of the National Cable Television Association. Other officers of the Newhouse companies, as well as many of its system managers, have served and currently serve as directors and officers of various state cable associations.

In making decisions on the various rules proposed in the Notice, Newhouse urges the Commission to act in a way which minimizes the impact on historical signal carriage patterns. The new rules, if not written carefully, could have a significant and deleterious effect on many systems' channel lineup. The greatest effect, however, would be on the consumer. Cable subscribers request and become accustomed to various services, and they are often particularly loyal to broadcast stations. The Commission should therefore be cognizant of the effect the rules can have on existing signal carriage.

Congress obviously intended that the 1992 Cable Act would be of benefit to television broadcasters when it included the must-carry and retransmission consent provisions. However, Congress also expressed its intent not to unduly disrupt or

adversely impact cable subscribers. In implementing these sections of the Act, Newhouse urges the Commission to keep this latter consideration in mind. In Newhouse's long experience in the cable television business, subscribers are just as likely to express their unhappiness over a dropped signal, or even a channel move, as over a rate increase.[1]

I. RETRANSMISSION CONSENT.

A. **Implementation Procedures.**

The Notice correctly notes that "because commercial television stations are required to choose between retransmission consent and must-carry rights, the implementation of the new Section 325(b) and the new Section 614 must be addressed jointly."[2] Although the Commission does not anticipate delaying the effective date of the must-carry rules until the retransmission consents provisions become effective on October 6, 1993, the Commission does request comment on whether it would be appropriate to allow a limited amount of time for cable systems to come into compliance with the new must-carry rules.[3]

The Commission's rules must provide for a reasonable transition period to come into compliance with the must-carry and retransmission consent provisions of the 1992 Cable Act.

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[1]For example, see the attached newspaper article regarding channel changes made by Newhouse in Corning, NY.

[2]Notice at ¶48.

[3]Ibid.

The implementation of both must-carry and retransmission consent will have a massive disruptive impact on the channel lineups of a vast majority of cable systems and on the established viewing patterns of cable subscribers. The potential disruption and dislocation caused by the new must-carry and retransmission consent provisions is exacerbated by the fact that the 1992 Cable Act uses entirely new criteria to define those stations which are considered local and thus are entitled to assert must-carry rights. Even cable systems which have continued to carry all local broadcast stations which were considered must-carry under prior FCC rules may be forced to restructure their channel lineup to accommodate new stations which are given must-carry rights for the first time and to negotiate the terms and conditions of retransmission consent to continue carriage of stations which have historically been considered local and to which subscribers have become accustomed.

Workable implementation procedures must take into account the fact that decisions as to the composition of the basic tier, channel positioning, the need for additional equipment, the preparation of subscriber education and marketing materials, franchise notice requirements for channel changes and even the preparation of programming guides cannot even be contemplated until after the must-carry/retransmission consent election deadline has passed. Because the October 6, 1993 deadline on signal carriage contained in the 1992 Cable Act

does not appear to allow for extensions or waivers, the FCC must determine how long it will take cable operators to implement changes to their channel lineups once the actual changes are known and then work backward from October 6, 1993 to establish an election deadline.

There are several considerations the FCC must factor into its implementation time line. First, adequate time is needed for retransmission consent negotiations. Such negotiations can reasonably be expected to last for an average of several months. Even in the relatively few cases where a cable system and broadcast station have no disagreement on the terms of retransmission consent, the need for drafting retransmission consent agreements and the internal and legal review of these agreements will take at least several weeks. In most cases, however, the time will be longer due to the fact that there will not be initial agreement on such issues as channel positioning, carriage of program-related VBI material, compensation and cross promotion. Where negotiations are ultimately unsuccessful, the cable system will need time to find alternate programming and realign channels.

The FCC's implementation schedule must also be cognizant of the need for signal carriage decisions to be implemented, where possible, prior to the beginning of the July 1st semi-annual copyright accounting period. As the Notice correctly notes, the Copyright Office has consistently interpreted the Copyright Act to require full payment for any broadcast signal

which is carried for any part of an accounting period.[4] To the extent that a cable operator is required to pay full copyright fees on a distant broadcast signal that it must drop for lack of retransmission consent, and then pay additional copyright fees for substitute programming, the cable operator is forced to incur unnecessary copyright fees with no real net gain in service to subscribers.

The Commission's implementation timetable must also take into account the time needed to reconfigure the basic tier to accommodate changes in broadcast station carriage and provide subscribers with A/B switches if signals must be dropped. For example, cable operators which presently offer a twelve channel basic tier and secure that tier by trapping out all channels above channel 13, may need to expand the number of channels offered to subscribers as part of the basic tier to comply with the new requirements of the statute. In such instances, operators will have to replace existing traps to allow basic subscribers to receive the additional channels. The FCC's implementation procedures must give operators enough time to identify exactly the type of equipment needed and then to order, receive and install the equipment prior to the October 6, 1993 deadline.[5] Furthermore, because in many

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[4]Notice at ¶50.

[5]There is the very real possibility that the widespread service reconfiguration that will occur to meet statutory requirements will result in equipment backorders and delays similar to those experienced in 1984 when the Commission

(continued...)

instances subscribers will be losing access to broadcast stations which have been carried on systems for a substantial period of years, the implementation period must allow sufficient time for cable operators to prepare and educate subscribers for the adjustment. Indeed, merely the mechanics involved in having new marketing materials and program guides printed up that reflect new channel lineups takes approximately two months. Finally, many cable operators have franchise requirements that require thirty to sixty days advance notice prior to the implementation of any programming changes. Such requirements are expressly sanctioned by the new legislation and will have to be honored.[6]

Based on the foregoing, the FCC should require local commercial stations to elect between retransmission consent and must-carry and notify each cable system via written notice of their election by May 1, 1993 and by May 1st every three years thereafter.[7] It is a simple matter for broadcast stations to determine which ADI they are located in, which counties are

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[5](...continued)
required cable systems to begin offsetting frequencies in the aeronautical communications and navigation bands.

[6]See Section 624(h)(i).

[7]This would give broadcasters a full thirty days from the FCC's April 1st target date to make their election and notify individual cable systems. This is more than enough time given the fact that broadcasters have had since the October 5, 1992 enactment date of the statute to contemplate their election and identify the cable systems located in their ADIs to whom notice of the election must be sent. Note the caveat to this, infra, for cable systems located in more than one ADI.

located in that ADI, and which cable systems operate in those counties. ADI information is readily available from such publications as the Broadcasting and Cable Market Place. Similarly, the Cable and Services Volume of the Television and Cable Factbook contains a listing of cable systems by county within each State. Given the ready availability of the information required by broadcasters to meet the must-carry/retransmission consent notification requirement, it will be far easier for broadcasters to make and notify cable systems of their must-carry and retransmission consent election within thirty days than it will be for cable operators to actually implement the results of those decisions within the five months remaining between May 1st and October 6th.

The Commission's implementation procedures should specify a default election procedure that will maintain the status quo in the absence of an affirmative must-carry/retransmission consent election. Thus, any local station which was being carried by a system on May 1st would be deemed to have elected must-carry rights. Any local station which was not being carried on a cable system as of May 1st would be deemed to have elected retransmission consent rights. By adopting a default election procedure which maintains the status quo, the Commission would prevent unnecessary disruption of established viewing patterns and the associated costs that such disruptions would entail without in any way limiting a station's right to elect between must-carry and retransmission consent. Such a

procedure ensures that a station wishing to change its existing election remains free to do so as long as such election is accomplished by the May 1st deadline.

B. **Contractual Issues.**

By far the most important contractual issue raised in the Notice is whether the terms of existing or future agreements between program suppliers and broadcast stations can supersede the new retransmission consent rights created by Section 325(b)(1)(A) of the Communications Act. Central to the determination of that issue is the proper interpretation of Section 325(b)(6) of the Communications Act which provides that:

> Nothing in this section shall be construed as modifying the compulsory copyright license established in section 111 of Title 17, United States Code, or as affecting existing or future video programming licensing agreements between broadcasting stations and video programmers.

47 U.S.C. §325(6)(6). The only way to implement retransmission consent in a manner that leaves both the compulsory license and existing or future programming contracts intact is to allow broadcasters complete freedom to negotiate retransmission consent with cable operators unhampered by their programming or network affiliation agreements.

The statutory language and legislative history of the retransmission consent provisions make absolutely clear that retransmission consent was intended to give broadcasters control over their signal by distinguishing between the rights in the signal and the rights in the programming carried on that

signal. This distinction is reflected in the statutory language. Subsection (a) of Section 325 clearly speaks in terms of programming and provides, in relevant part, that:

> Nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station. (emphasis supplied).

47 U.S.C. §325(a). New subsection (b) of Section 325 clearly speaks in terms of a broadcaster's signal and states that:

> No cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station . . . . (emphasis supplied).

47 U.S.C. §325(b). In referring to a station's signal rather than its programming, Congress clearly sought to avoid an interpretation of Section 325(b) that would allow broadcast networks and program suppliers to interfere with a broadcast station's right to negotiate cable carriage.

The Senate Report on retransmission consent is particularly illuminating in this regard. That report states, in relevant part, that:

> Section 15 of the bill amends Section 325 of the 1934 Act (47 U.S.C. 325) to establish the right of broadcast stations to control the use of their signals by cable systems and other multichannel video programming distributors . . . . The Committee believes, based on the legislative history of this provision, that Congress' intent was to allow broadcasters to control the use of their signals by anyone engaged in retransmission by whatever means.
>
> * * *
>
> The Committee is careful to distinguish between the authority granted broadcasters under the new section 325(b)(1) of the 1934 Act to consent or withhold consent for the retransmission of the broadcast

> signal, and the interest of copyright holders in the programming contained on the signal.
>
> * * *
>
> Cable systems carrying the signals of broadcast stations, whether pursuant to an agreement with the station or pursuant to the provisions of new sections 614 and 615 of the 1934 Act, will continue to have the authority to retransmit the programs carried on the signals under the section 111 compulsory license. The Committee emphasizes that nothing in this bill is intended to abrogate or alter existing program licensing agreements between broadcasters and programming suppliers, or to limit the terms of existing or future licensing agreements.[8]

The foregoing language evidences Congress' clear desire to implement a retransmission consent scheme that would give broadcasters free reign to negotiate with cable systems the terms and conditions of cable carriage unimpeded by the separate agendas of the broadcast networks and Hollywood.

Separating the rights in the underlying programming from the rights in the signal over which the programming is carried ensures that the compulsory copyright license remains unmodified as required by Section 325(b)(6) by preventing a cable operator from claiming that the retransmission consent granted by a broadcasting station includes the rights to the underlying programming. Thus, a cable operator who receives retransmission consent from a broadcast station to carry the station's signal must still fulfill the requirements of the compulsory copyright license for the programming contained on that signal or risk a lawsuit for copyright infringement. The

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[8]Senate Report at 34, 36.

grant of retransmission consent by a broadcast station also leaves existing and future program agreements unaffected since program owners are compensated through a combination of direct licensing fees from broadcasters and compulsory license fees from cable operators in exactly the same way as they were prior to enactment of retransmission consent. Although a broadcaster can elect to refuse retransmission consent, such a refusal could actually benefit the copyright holder since a cable operator who desires to carry the programming may decide to negotiate in the marketplace for carriage of that programming directly with the program supplier.

Just as broadcasters do not have a right to license the programming contained on their signal by granting retransmission consent, program owners have no legitimate interest in a broadcaster's signal apart from the programming and should not be allowed to dictate the terms of carriage agreements between cable operators and broadcast stations.[9] An interpretation of the statute which would allow programmers or networks to dictate the circumstances or terms under which a

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[9]Another way to look at this would be to view a broadcaster's retransmission consent rights in its signal as akin to the rights which a wired or wireless cable operator has in preventing theft of service. Where an individual steals service, the Communications Act gives the cable operator a cause of action separate and apart from any rights which the owners of programming carried on the cable system might have. It would be just as inappropriate for a programmer to attempt to contractually limit a cable operator's theft of service rights by contract as it would be to allow a programmer or network to control a broadcaster's retransmission consent/must-carry election.

broadcast station could or could not exercise its retransmission consent or must-carry rights via their programming contracts is clearly prohibited by Section 325(b)(6) since such an interpretation would effectively modify such contracts to cede to program distributors and networks contractual control over signal carriage issues which they have never had. For example, if the statute were interpreted to allow the exercise of retransmission consent to be the matter of contract between a broadcast station and a programmer or network, these latter entities would be able dictate whether broadcast stations exercise must-carry rights or retransmission consent, and the terms and conditions of cable carriage. Such a result is clearly contrary to that which Congress intended in enacting Section 325(b), which was to grant broadcasters control over their signal. Such a result also abrogates the compulsory license by allowing program suppliers and networks to require what is in fact direct licensing for their programming.

Most significantly, an interpretation of the 1992 Cable Act which allows program suppliers to dictate the exercise of retransmission consent by broadcast stations would result in massive disruption to long established viewing patterns and the deprivation of programming to cable subscribers. Most cable systems carry a significant number of television stations from outside their ADIs and for which retransmission consent would be required. If programmers and networks were allowed to

control a broadcast station's retransmission consent election, this would effectively give them the power to reimpose distant signal carriage limitations even more far reaching than those which were removed by the FCC in 1980 since many of the stations that would be subject to deletion have always been considered local.[10] Many of the stations for which retransmission consent would be required for continued carriage have been on the cable systems for years and those stations often are available off-the-air in the cable operator's service area.

The potential loss of programming to the public is no less a consideration where distant network stations are contractually precluded from granting retransmission consent. Networks license their programming on a national basis, and receive no additional compensation under the section 111 compulsory copyright license.[11] In such situations, there is no reason to allow the networks to exact additional payment for their programming. Indeed, since networks rarely have more than a single affiliate in each ADI, they would have the incentive and the ability to require local affiliates to elect

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[10]The Commission has explicitly repudiated the concept of retransmission consent as a means of regulating distant signal carriage. Owensboro Cablevision, 32 RR 2d 879 (1975).

[11]The compulsory license is intended to compensate program suppliers for the distant, non-network programming carried by cable systems. Accordingly, copyright fees for network stations are calculated on the basis of one-quarter of a distant signal equivalent based upon the assumption that this corresponds to the amount of distant non-network programming carried on a typical network station. See 47 U.S.C. §111(f).

retransmission consent and share in any retransmission consent payments while at the same time precluding their affiliates from granting retransmission consent outside of their ADIs. Not only would this result in higher retransmission consent costs being paid by cable subscribers for programming which has been licensed for national distribution, but the unintended consequence would be that subscribers would lose access to network programs that are preempted by the local affiliate and could not be brought in via distant affiliates as is presently done. The public may well be deprived of any opportunity to see this programming if network affiliates are contractually precluded from negotiating retransmission consent agreements with cable operators outside of their ADIs.

C. **Applicability and Scope.**

1. Canadian Stations.

The Commission should clarify that the retransmission consent provisions of the statute do not apply to Canadian stations. Sections 625(b)(3)(A) and 625(b)(4) of the 1992 Cable Act clearly demonstrate that Congress intended the must-carry and retransmission consent provisions to operate in tandem. Section 625(b)(3)(A) establishes the basis for a must-carry/retransmission consent election and provides, in relevant part, that:

> [T]he Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and the right to signal carriage under section 614 . . . .

47 U.S.C. §625 (b)(3)(A). Similarly, Section 625(b)(4) makes clear that by electing retransmission consent, a station loses certain protections given to must-carry stations, stating that:

> If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent . . . . The provisions of section 614 [commercial must-carry] shall not apply . . . .

47 U.S.C. §625(b)(4). Taken together, these provisions demonstrate that Congress sought to provide television broadcasters with both must-carry and retransmission consent rights and with the benefit of electing between those rights on a system-by-system basis.

Significantly, in defining that class of stations to whom the must-carry/retransmission consent election applies, the statute applies only to any "full power television broadcast station . . . licensed and operating on a channel regularly assigned to its community by the Commission . . . ." 47 U.S.C. §534(h)(1)(A). Congress was well aware of the fact that unlike domestic stations, which are licensed by the Commission, Canadian television stations do not operate on channels assigned to their communities by the FCC.[12] Thus, such stations are not considered local commercial stations under the

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[12]For example, the Copyright Revision Act of 1976 contains an express provision allowing certain Canadian and Mexican stations to be considered local for copyright purposes even though such stations were not subject to the FCC's must-carry rules in effect on April 15, 1976. See 17 U.S.C. §111(f)(1976). Significantly, Congress did not make a similar provision for Canadian stations in the 1992 Cable Act precisely because such stations remain outside the FCC's jurisdiction.

statute and may not assert must-carry rights under any circumstance. Given that must-carry and retransmission consent were designed to operate in tandem, and given that the FCC is given continuing oversight over the implementation of retransmission consent, it is highly unlikely that Congress could have intended to give Canadian stations broader retransmission consent rights that it gave domestic stations whose exercise of those rights are regulated by the FCC.

Again, this issue impacts on long-established viewing habits which the Commission should do its utmost to avoid disturbing. Newhouse has a number of systems in upstate New York which have each carried Canadian stations for over 20 years. For example, its systems in Malone and Ogdensburg, NY, each carry three Canadian stations as subscribers in those communities work, shop and identify with areas over the border.

2. Superstation Exception.

New Section 325(b) of the 1992 Cable Act contains four exceptions to the retransmission consent requirement. One of these exceptions is for:

> retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991.

47 U.S.C. §325(b)(1)(D). As the Commission points out in paragraph 47 of its Notice, out-of-market retransmissions by microwave, for example, are not exempt from the retransmission

consent requirement. Newhouse would like to point out to the Commission that some superstations are received out-of-market by nearby cable systems using reception methods other than satellite. Such systems still should be deemed eligible for the superstation exemption.

The rationale for the exemption is that Congress did not want to disrupt certain established relationships, so it prevented broadcast stations which operate as superstations from exercising retransmission consent rights.[13] The fact that a satellite-available superstation is also receivable off-the-air, or via an existing microwave network, does not change the essence of this matter. For example, Newhouse's Rome, NY system carries WSBK and WPIX, both satellite superstations, which it receives via microwave. The system could switch to a TVRO to receive the station and this would clearly obviate the need to seek retransmission consent. To hold that the system must obtain retransmission consent, however, because WSBK and WPIX are not actually obtained from a satellite would be a logically absurd result. It would also cost the system more money to obtain the stations via satellite.[14] However, such a charade should not be necessary. Newhouse submits that the superstation retransmission consent exemption should look to the nature of the broadcast station, not the means of reception

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[13]Senate Report at 37.

[14]See the attached letter in which United Video, a satellite carrier, is already trying to take advantage of this situation.

used by an individual cable system. Thus, in the example given above, the Rome system should not have to obtain retransmission consent from WSBK or WPIX even though the stations are received by microwave.

3. ADI- Wide Application.

A broadcast station's must-carry/retransmission consent election should be uniform throughout its ADI. The express language of the 1992 Cable Act clearly indicates that the retransmission consent provisions were intended to apply uniformly throughout a particular cable system.[15] This language makes clear that a station is not free to assert must-carry rights as to particular communities served by a cable system and attempt to negotiate terms for retransmission consent with respect to the remaining communities served by the system. The same logic applies to the ADI-wide situation.

Application of the retransmission consent and must-carry provisions on an ADI-wide basis is necessary to effectuate Congress' mandate that basic rates be reasonable.[16] If broadcast stations were allowed to elect must-carry and retransmission consent on a system-by-system basis, this would add to the cost of providing cable service by allowing television stations to assert must-carry rights in some or most of the systems in the ADI, and then demand unreasonable retransmission consent payments as a condition of allowing

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[15]Section 325(b)(4).

[16]Section 323(b)(1), as amended by the 1992 Cable Act.